HON'BLE SRI JUSTICE B.N.RAO NALLA

C.M.A.No.411 of 2005

JUDGMENT:

The petitioners in O.P.No.2320 of 2000 aggrieved by the orders dated 31st August, 2004 passed by the Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad, preferred this appeal. The petitioners were awarded a total compensation of Rs.2,07,000/- with proportionate costs and interest at 9% per annum.

2. The brief facts of the case are that on 01.7.1999 at about 6.00 p.m. while the deceased was proceeding from Hyderabad to Lathur in Maruthi car bearing registration No.AP 9 R 5824, a lorry bearing No. AP 9 U 7022 came at high speed from opposite direction driven in a rash and negligent manner by its driver and dashed against the Maruthi car resulting in the death of the deceased on the spot. P.S. Mannaekhell registered a case in Crime No.114/99 under Section 304-A IPC against the lorry driver. The first petitioner- wife, petitioners 2 to 5-daughters and petitioner No.6-son of the deceased filed the said O.P. claiming compensation of Rs.12,00,000/-.

3. Respondent No.1 remained *exparte* and respondent No.2-insurance company filed counter denying the claim petition averments including the factum of accident, age, avocation and income of the deceased.

4. Based on the pleadings of both sides, the Tribunal framed the relevant issues.

5. Wife of the deceased got herself examined as PW.1 besides examining the eye witness to the accident as PW.2 and got marked Exs.A.1 to A.10. No witnesses were examined on behalf of the respondents and no documents were marked except marking Ex.B.1- policy.

6. The Tribunal after taking into consideration the evidence and other material on record held that the accident had occurred due to rash and negligent driving on the part of the lorry driver and the petitioners were entitled to claim compensation for the death of the deceased who was their

only bread winner and that the respondents are jointly and severally liable to pay compensation to the petitioners.

7. It is the case of the appellants-petitioners that the deceased was carrying on business of plywood and lamination and the same is evident from Exs.A.8-registration certificate and Ex.A.9-subsequently renewed registration certificate and that he was earning Rs.14,000/- per month as per Ex.A.5-I.T. returns for the assessment year 1998-99 and 1999-2000. It is contended on behalf of the appellants-petitioners that the lower Tribunal erred in not considering Ex.A.5 on the ground that it was filed after the death of the deceased. It is also contended that the income of the deceased was fixed at Rs.50/- per day without considering Ex.A.5-I.T.returns and Ex.A.10-rent receipt. It is further contended that though the deceased was considered to be aged about 45 years as per Ex.A.3-inquest report, erroneously multiplier '12' was pressed into service. As per the decision reported in **Sarla Verma and others Vs. Delhi Transport Corporation and another**[1], proper multiplier for a person aged between 41 and 45 years is '14'. It is also contended that the Tribunal erred in not granting any compensation towards loss of consortium and also towards funeral expenses.

8. On the other hand, it is contended on behalf of the insurance company that though the petitioners' case is that the deceased was carrying on business and earning Rs.14,000/- per month, no account books were produced to prove the same. It is contended that the lower Tribunal was right in brushing aside Ex.A.5-I.T.returns since it pertains to the assessment year prior to the death of the deceased. It is also contended that Exs.A.8 and A.9 are one and the same and if registration certificate was issued and if the deceased was carrying on business in the name and style as mentioned in Exs.A.8 and A.9, they could have filed account books. That since the petitioners failed to file account books, the Tribunal in the circumstances had fixed his daily earnings at Rs.50/-. The insurance company also took

exception to non-filing of PME report stating that had it been filed the actual age of the deceased would have been known therefrom. It is also contended that no witness was examined in support of Ex.A.10-rent receipt, therefore, it was rightly not considered by the Tribunal.

9. Having regard to the facts and circumstances of the case, this court is of the view that in the absence of any evidence to prove the monthly earnings of the deceased, it is proper to seek the help of the second schedule of the Motor Vehicles Act to fix the income of the deceased. As per the second schedule, the monthly earnings of the deceased can be fixed at Rs.3,000/-, out of which 1/4th is liable to be deducted towards personal expenses in view of petitioners being six in number. That since the deceased was aged 45 years as per Ex.A.3-inquest report, the proper multiplier to be considered is '14'. Thus the total loss of dependency would come to Rs.3,78,000/- (Rs.2,250/- x 12 x 14). In addition thereto, an amount of Rs.15,000/- as already awarded by the Tribunal towards loss of estate is confirmed. Apart from the above, the first petitioner-wife of the deceased is entitled to an amount of Rs.10,000/- towards loss of consortium and that the petitioners are also entitled to an amount of Rs.5,000/- towards funeral expenses.

10. Thus, the appellants-petitioners are held to be entitled to a total compensation of Rs.4,08,000/- (Rupees four lakhs eight thousand only). However, the interest is reduced from 9% per annum to 7.5% per annum so far as the enhanced amount of compensation is concerned.

11. In the result, the appeal is partly allowed. No order as to costs.

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B.N.RAO NALLA,J

12-11-2010

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[1] (2009) 6 SCC 121